IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 47/2002

1. Mr. Laximan Gauns,
   major in age, married, businessman,
   residing at House No.134,
   Mapusa, Bardez, Goa.

2. Mrs. Laximan Gauns,
   major in age, Housewife,
   residing at House No.134,
   Mapusa, Bardez, Goa.

3. Dr. Albert Pedro Lucio Afonso
   (since deceased) through LRS.,
   appellant Nos. 4 to 17,

4. Mrs. Maria Filomena Afonso
   Mascarenhas, major in age,
   married, residing at House No.12-C,
   Xel, Bastora, Bardez, Goa.

5. Mr. E. J. Mascarenhas,
   major in age, husband of Maria Filomena
   Afonso Mascarenhas,
   Residing at Xel, Bastora, Bardez, Goa.

6. Mrs. Maria Alina Afonso Rodrigues,
   major in age, married,
   residing at House No. C-1-22(5),
   Near the Court, Margao, Goa.

7. Mr. Oswald Rodrigues,
   major in age, marred,
   residing at House No. C-1-22(5),
   Near the Court, Margao, Goa.

8. Mrs. Maria Elsa Afonso Martins,
   major in age, married,
   resident of House No.355,
   Caranzalem, Illas, Goa.

9. Mr. Olavo Martins, major in age,

married, resident of House No.355,
Caranzalem, Ilhas, Goa

10.Mrs. Maria Julieta Dourado,
major in age, married,
resident of Ridgeway,
Essex, London,
(through Power of Attorney
Adv. Antonio Braganza)

11.Mr. Adolf Dourado,
major in age, married,
resident of Ridgeway,
Essex, London,
(through Power of Attorney
Adv. Antonio Braganza)

12.Ms. Maria Zinha Afonso Godinho,
major in age,
Resident of Caranzalem, Ilhas, Goa.

13.Mrs. Gracia Godinho,
major in age, married,
residing at House No. 358,
Caranzalem, Ilhas, Goa.

14.Mrs. Maria Ida Afonso Machado,
major in age, married,
Residing at House No 156,
Rua Natal, Fontainhas, Panaji, Goa,

15.Mr Jose Machado,
major in age, married,
Residing at House No 156,
Rua Natal, Fontainhas, Panaji, Goa,

16.Mrs Maria Fatima Afonso Braganza,
major in age, married,
residing at House No.220-6-2,
Near Church, Mapusa, Goa.

17.Mr. Antonio P. Braganza, major,
married, Advocate,
residing at House No.220-6-2,
Near Church, Mapusa, Goa. ..... Appellants.

V/s.

1. Mr. Deepu P. Kuncolienkar,
(since deceased represented by
his legal representatives),

1(a) Mr Usno Deepu Kuncolienkar,
major in age, married,
residing at Amaral,
Taleigao, Ilhas, Goa.

1(b) Smt. Vaishali Usno Kuncolienkar,
major in age, married,
Residing at Amaral, Taleigao,
Ilhas, Goa.

1(c) Shri Nepal Deepu Kuncolienkar,
major in age, married,
residing at Amaral, Taleigao,
Ilhas, Goa.

2. Smt. Radhika Deepu Kuncolienkar,
major in age, married,
residing at Amaral, Taleigao, Ilhas, Goa. ..... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. M. D'Souza, Advocate for the appellant.

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for respondents.

CORAM : P.V. KAKADE, J.

DATE : 17th November, 2006.

ORAL JUDGMENT :

Heard learned Counsel for both the parties. The appellants-

defendants have filed the appeal against the Judgment and Order passed by the Addl. District Judge, Panaji who has dismissed the appeal. After hearing the learned Counsel for sometime, it is apparent on perusal of the Judgment of the lower appellate Court that obviously, the issue involved was whether the respondents have acquired customary right of easement by prescription and whether the Civil Judge had committed any illegality in appreciating the evidence on record while decreeing the suit based on the evidence on record. The appellate Court appears to have not at all appreciated this aspect which would answer the crux of the matter to the effect that whether right of prescription over the property exists in favour of the concerned party or not. The learned Counsel for the respondents submitted that there was such evidence on record, but apparently it was not discussed.

2. It is apparent, therefore, that the matter requires remand for proper appreciation of the evidence on record in the light of the above noted observation. Hence, the appeal is partly allowed. The order passed by the Addl. District Judge, Panaji dismissing the appeal is set aside. The matter is remanded to the lower appellate Court to re-appreciate the entire evidence on record, so as to come to the conclusion as to whether the concerned party has right of prescription over the suit way or not. The issue shall be determined after hearing both the parties and adjudication shall be over within a period of three months from the date of receipt of writ of this Court. With this direction, the appeal stands disposed of with no order as to costs. In the meantime, the parties shall

maintain status quo with regard to the suit property, pending adjudication of the appeal in the lower appellate Court.

P.V. KAKADE, J.

ssm.